



# State of Utah

## INSURANCE DEPARTMENT

Michael O. Leavitt  
Governor  
Merwin U. Stewart  
Commissioner

State Office Building, Room 3110  
Salt Lake City, Utah 84114-6901  
(801) 538-3800  
FAX (801) 538-3829  
[www.insurance.state.ut.us](http://www.insurance.state.ut.us)

April 6, 1999

Steven Burton, President  
Professional Insurance Exchange  
445 E. 4500 S. Suite 130  
Salt Lake City UT 84107

Dear Mr. Burton:

I am submitting a copy of the Market Conduct Examination Report of Professional Insurance Exchange, as of June 30, 1998.


Utah Code Annotated (U.C.A.) Subsection 31A-2-204(7), allows the examinee to either accept the report as written or request agency action. If a written request for agency action is not filed within twenty (20) days, from the date of this letter, the report will be officially filed as a public document.

Please also be advised that, pursuant to U.C.A. Subsection 31A-2-205(4), "The examined insurer shall certify the consolidated account of all charges and expenses for the examination. One copy shall be retained by the insurer and the other shall be filed with the department as a public record." In addition, U.C.A. Subsection 31A-2-204(8) requires that: "The examinee shall promptly furnish copies of the adopted report to each member of its board."

If you have any questions, please feel free to contact me.

Sincerely,

MERWIN U. STEWART  
Insurance Commissioner

  
Larry H. Whitlock, CFE, CPA  
Chief Examiner



STATE OF UTAH INSURANCE DEPARTMENT  
REPORT OF MARKET CONDUCT EXAMINATION  
of

**Professional Insurance Exchange**

445 E 4500 S  
Salt Lake City, Utah 84107

NAIC Company Code Number: 37435

as of  
June 30, 1998

## TABLE OF CONTENTS

SALUTATION .....	1
FOREWORD .....	2
SCOPE OF EXAMINATION .....	2
COMPANY PROFILE .....	2
History .....	2
Affiliated Companies .....	3
Territory and Plan of Operations .....	3
Company Growth .....	3
PREVIOUS EXAMINATION FINDINGS .....	4
CURRENT EXAMINATION FINDINGS .....	4
Company Operations/Management .....	4
Year 2000 Compliance .....	4
Complaint Handling .....	5
Marketing and Sales .....	5
Producer Relationships .....	5
Underwriting/Rating .....	5
Policyholder Service .....	6
Claims .....	6
SUMMARIZATION .....	8
Summary .....	8
Examiner's Comments in Reference to Policyholder Treatment .....	8
ACKNOWLEDGMENT .....	8

March 22, 1999

The Honorable Merwin U. Stewart  
Insurance Commissioner  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114

In accordance with your instructions, an examination has been made of the market conduct practices of:

PROFESSIONAL INSURANCE EXCHANGE  
Salt Lake City, Utah

a domestic mutual insurer, hereinafter referred to in this report as the "Company," as of June 30, 1998. Commentary in this report is as of June 30, 1998, unless indicated otherwise. The report of such examination is herein respectfully submitted.

## FOREWORD

The market conduct examination report is, in general, a report by exception. Reference to Company practices, procedures, or files subject to review may be omitted if no improprieties were encountered by the examiner.

## SCOPE OF EXAMINATION

This examination was conducted by an examiner representing the Utah Insurance Department. The purpose of the examination was to determine if the Company's operations were consistent with public interest and in compliance with:

- Utah Code Annotated (U.C.A.) Title 31A
- Rules promulgated by the Utah Insurance Department as contained in the Utah Administrative Code (U.A.C.) applicable to U.C.A. Title 31A
- Standards contained in the Market Conduct Examiners Handbook of the National Association of Insurance Commissioners (NAIC).

### Period Covered by the Examination.

The last market conduct examination of the Company was conducted as of December 31, 1993, by a representative of the Utah Insurance Department. The current examination covers the intervening period from January 1, 1994, through June 30, 1998. Significant transactions and/or events occurring after June 30, 1998, and noted during the course of the examination were reviewed.

## COMPANY PROFILE

### History

The Company was originally organized as a reciprocal inter-insurance exchange and granted its original certificate of authority on September 1, 1978, pursuant to U.C.A. Title 31A, Chapter 10, for the purpose of insuring its members and others against loss, liability, or damage arising out of or incurred in connection with the performance of professional services. This code section was subsequently repealed and the Company became a mutual insurance company subject to U.C.A. § 31A-5-108(1), effective July 1, 1986.

The Company was authorized to write dental malpractice insurance, which according to U.C.A. §§ 31A-1-301 (53) and (66) is classified as "Professional Liability (excluding Medical Malpractice)."

The Company was controlled by its membership. The business matters of the Company were governed by its Rules and Regulations. The governing body of the Company, composed of nine members, was known as the "Advisory Committee."

### **Affiliated Companies**

The Company owned 100% of the stock of an insurance agency, Professional Assurance Corporation (PAC). PAC was licensed as an insurance agency and provided, through referral arrangements with other providers, insurance products other than professional liability to members who desired such.

Company personnel were responsible for managing the daily affairs of PAC. However, the Company and PAC did not have a management agreement, during the period under examination, as required by U.C.A § 31A-16-106(1)(a)(iv). A management agreement was executed, between the two parties, on October 14, 1998.

### **Territory and Plan of Operations**

The Company was licensed only in the state of Utah. Insurance sales were confined to dentists licensed and practicing within the state. Professional liability policies were issued on an "occurrence basis." Membership solicitation was made by mail and personal contact of existing members. Policies were assessable pursuant to a "Subscription Agreement," included in each policy, which binds the applicant to a contingent liability for payment of actual losses and expenses incurred by the Company.

### **Company Growth**

The following schedule includes gross premium written, by line of insurance, for the indicated year. These figures were taken from the Five-Year Historical Data section of the 1997 Annual Statement.

1997	\$692,838
1996	\$667,412
1995	\$613,200
1994	\$631,376
1993	\$597,743
1992	\$562,158

## **PREVIOUS EXAMINATION FINDINGS**

The prior market conduct and financial examination reports and the Company's responses to these reports were reviewed. All concerns had been addressed by the Company.

## **CURRENT EXAMINATION FINDINGS**

### **Company Operations/Management**

#### **Certificates of Authority**

The Company's Certificate of Authority was reviewed. The Company was licensed to transact the business of professional liability insurance in the State of Utah. The Certificate was current and the Company appears to be operating within the parameters of its certificate.

#### **Internal Audits**

The Company did not have an audit committee during the examination period as required by U.C.A. § 31A-5-412(2). However, one was established during the October 18, 1998, quarterly meeting of the Advisory Committee. The first meeting of this audit committee was held January 6, 1999. The Audit Charter was reviewed and found to be in order.

#### **Antifraud Plans**

The Company had no written antifraud plan. However, review of claims by the Advisory Committee served as an antifraud control.

#### **Disaster Recovery Plan/Computer Systems**

The Company had no written disaster recovery plan. Steps were taken to protect critical information, such as storing files in fireproof cabinets. However, backups of the Company's electronic data processing (EDP) systems were not being retained off-site. It is recommended that after each system back up, the back up medium be kept at an off-site location.

### **Year 2000 Compliance**

Information provided by those responsible for maintaining the EDP equipment and systems, upon which significant Company transactions was processed, did not reveal any material problems with Year 2000 compliance issues.

## **Complaint Handling**

### **Complaint Handling Procedures**

The Company did not have a policy and procedure manual for handling of complaints. Any complaint filed would be handled by the Attorney-in-Fact of the Company. One complaint was filed with the Utah Insurance Department, during the examination period, which was subsequently withdrawn.

### **Complaint File Review**

The only complaint filed was reviewed. No exceptions were noted.

## **Marketing and Sales**

### **Advertising/Sales Materials**

Formal advertising consisted of a small advertisement that appeared in a periodic dentist's publication.

## **Producer Relationships**

The Company had two producers who were licensed and appointed to transact business for the Company. One of the producers had a contract with the Company as its "Attorney-in-Fact." The other producer had a contract as an "Executive Consultant." These contracts were reviewed for compliance with U.C.A. §§ 31A-23-311 and 31A-23-305. There were no discrepancies. These two producers were also producers for Professional Assurance Corporation, a subsidiary of the Company.

## **Underwriting/Rating**

### **General**

The Company issued dental malpractice insurance on an occurrence basis. The Company did not provide insurance to oral surgeons who performed all of the procedures of their specialty. However, dentists who perform limited oral surgery may be covered. The coverage limits were \$100,000 for any one occurrence with an annual aggregate of \$300,000. Insureds with excess claim action were charged a surcharge.

The policy issued by the Company to its insureds contained a contingent liability provision. With the approval of the Advisory Committee and the Insurance Commissioner, the policy allowed the Attorney-in-Fact to levy an assessment, up to a maximum of \$2,000, upon the insured. This assessment was to make up a deficiency, in the event the admitted assets were



insufficient to discharge the Company's liabilities, and maintain the statutory deposit with the Commissioner.

### **Policy Forms and Endorsements**

Applications and other policy forms were reviewed and found to be in order. Renewal applications were required for each renewal period, which asked the basic questions regarding licensing, required certifications, and the type of procedures performed. The purpose of the renewal application was to ensure the dentist still qualified for the type of coverage provided.

### **Underwriting Files**

Twenty-six files, from a total population of 1,164, were randomly selected for review. These files were reviewed for effective contracts, documentation for billings, delays, reinstatements, and other policy transactions. One file did not have the effective date on the subscription agreement.

### **Policyholder Service**

The Company's Advisory Committee discussed the applications of those dentists who wished to join the Company. Those considered risks were denied. There were two instances where the Company discontinued services through non-renewal, due to the policyholder digressing from accepted dental practices.

### **Claims**

#### **General**

The Attorney-in-Fact completed preliminary investigation for each professional liability insurance claim reported. Meritorious claims were settled, whenever possible, by the Attorney-in-Fact. Otherwise, the claims were resolved by arbitration or litigation. The Company's Advisory Committee reviewed claims in progress and claims opened and closed during the current quarter. After a review of the claims, the committee recommended surcharges on those policyholders who had settlements paid for meritorious claims, or who had multiple non-meritorious claims.

When a claimant was not happy with a decision of the Company, and wished to use legal channels to settle the claim, the claimant was required to file a "Notice of Intent" to commence action. This action is required by U.C.A. § 78-14-5. Such notice shall include a general statement of the nature of the claim, the persons involved, the date, time and place of the occurrence, the circumstances thereof, specific allegations of misconduct on the part of the prospective defendant, the nature of the alleged injuries, and other damages sustained. The Company researched the allegations and determined if the claim was worth pursuing. The

Company informed the claimant that they would either settle the claim or defend it. Any claim settled, on behalf of a dentist, must be reported to the National Practitioner Data Bank.

The information on the following table discloses claims paid for the included years. This information was taken from the Five-Year Historical Data section of the 1997 Annual Statement.

1997	\$190,637
1996	\$26,526
1995	\$79,118
1994	\$151,690
1993	\$374,867

#### **Claim File Review**

Using systematical interval sampling, a sample of 19 claims was selected for review. These claims were examined according to NAIC standards and standards of the National Practitioner Data Bank (NPDB). Following are the results of this review:

- ▶ Two claim files were still open
- ▶ One claim file had a transcription error (the occurrence year was different from the incident year)
- ▶ Three claim files did not have complete documentation as to amount paid for legal fees.

The progress sheet maintained in each file, showed the activity performed on the claim. However, legal expenses were not listed on these sheets, nor were copies of the checks for legal expenses maintained in the files. It is recommended that all transactions be recorded in the files.

## SUMMARIZATION

### Summary

Comments included in this report which are considered to be significant and requiring special attention are summarized below:

1. Off-site electronic data back-ups were not being made. It is recommended that after each system back-up, the back-up medium be kept in an off-site location. **(Profile)**
2. The progress sheet maintained in each file, showed the activity performed on the claim. However, legal expenses were not listed on these sheets, nor were copies of the checks for legal expenses maintained in the files. It is recommended that all transactions be recorded in the files. **(Claims)**

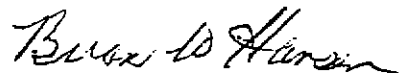
### Examiner's Comments in Reference to Policyholder Treatment

Generally, members appear to have been treated correctly and fairly by the Company. Claims were investigated promptly and paid when proper documentation was received from the claimant. Policyholder service appears to be timely and correct.

## ACKNOWLEDGMENT

The cooperation and assistance rendered by Dr. Engar and his staff during the examination are hereby acknowledged and appreciated. A special thanks is extended for their courtesy, and promptness in providing all requested documents.

Sincerely



Brian W. Hansen, FLMI, CFE  
Market Conduct Examiner-in-Charge  
Utah Insurance Department